

N1H6RODS

Sentencing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

21 CR 246 (RA)

5 ADRIANO RODRIGUEZ-DIAZ,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 17, 2023
9:15 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

District Judge

12 APPEARANCES

13 DAMIAN WILLIAMS,

14 United States Attorney for the
15 Southern District of New York

16 BY: DANIELLE M. KUDLA

MITZI STEINER

Assistant United States Attorneys

17 ERNESTO CERIMELE

18 Attorney for Defendant

19 -and-

20 HENRY KLINGEMAN

Attorney for Defendant

21 Also Present:

22 ERIKA DE LOS RIOS, Spanish Interpreter
23 Jill Hoskins, Spanish Interpreter

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1 (Case called)

2 DEPUTY CLERK: Counsel, please state your name for the
3 record.

4 MS. KUDLA: Good morning, your Honor. AUSA Danielle
5 Kudla and AUSA Mitzi Steiner.

6 THE COURT: Good morning.

7 MR. CERIMELE: Earnesto Cerimele and Henry Klingeman,
8 on behalf of Adriano Rodriguez-Diaz.

9 THE COURT: Thank you. You May be seated.

10 I note Mr. Rodriguez-Diaz is being assisted by a
11 Spanish interpreter. If at any time you have trouble
12 understanding anything that's happening in this proceeding,
13 either for the language barrier or any other reason, please let
14 me know.

15 THE DEFENDANT: Yes.

16 THE COURT: So we're here for sentencing. Of course,
17 Mr. Rodriguez-Diaz pled guilty in July to participating in a
18 conspiracy to import cocaine in violation of 21 United States
19 Code Section 963. But before -- well, a couple things.

20 So there are, of course, a number of disputed issues
21 that we had a Fatico hearing about. I'm going to state my
22 findings for the record.

23 I will note, though, that on each of those issues, I
24 agree with the government, and I think it has proven each of
25 the contested issues by a preponderance of the evidence. So

1 I'm going to state my reasoning for that in a moment. But I
2 want to talk about the obstruction of justice issue before I
3 state my reasoning with respect to the disputed issues of the
4 Fatico hearing.

5 So as the parties are aware, the government is
6 requesting an enhancement pursuant to guidelines provision
7 3C1.1 for the defendant's alleged attempts to obstruct justice
8 or intimidate a cooperating witnessing and his family members.

9 I have read all the supplemental letters, but I still
10 do have a number of questions for the parties. I want to start
11 with defense counsel, and then I'll turn back to the
12 government.

13 You said in one of your letters that these facts are
14 disputed, but it wasn't clear to me exactly what you're
15 disputing. Are you disputing that there was a phone call that
16 the defendant made to CW1's brother, or are you disputing the
17 substance of the call? Or is it just kind of who approached
18 who first and exactly whether a direct threat was made. It
19 just wasn't entirely clear to me what you were disputing.

20 MR. CERIMELE: Yes, your Honor. We dispute
21 everything. On the one hand, we dispute that the call
22 occurred. On the other hand, we dispute that it occurred.
23 Even if it did occur, it occurred as the government suggested
24 it did. So we don't stipulate or agree that it happened at
25 all.

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1 THE COURT: All right. And you haven't submitted any
2 kind of affidavit or anything else on behalf of your client?

3 MR. CERIMELE: No, your Honor. Certainly, it's not
4 our burden to produce.

5 THE COURT: I'm not suggesting it is, but I just
6 wanted to be clear.

7 All right. Let me just turn to the government.

8 So, of course, I can rely on hearsay at sentencing,
9 but I also have to ensure that the hearsay is reliable. I
10 mean, I don't have any particular reason to doubt that this
11 happened and that there is corroboration of calls being made
12 and of the phone being found in a cell, but why is it that you
13 didn't get an affidavit from the brother or that you aren't
14 seeking to call the brother -- even if he couldn't come here,
15 if he's unavailable to come here, remotely? Why is it that
16 this needs to be by way of hearsay?

17 MS. KUDLA: Your Honor, I think it was primarily in
18 light of the timing for which these facts have come up. And at
19 the point that -- this was right before the hearing when we
20 learned this evidence and then obtained it shortly before the
21 holidays. And I think at that point, certainly, we felt that
22 we had met our burden, which was preponderance of evidence
23 based on the corroboration from the cell phone records, the
24 fact the cell phone had been called there. We had disclosed in
25 discovery to defense counsel the contemporaneous text message

1 that was received from the brother saying, I can't believe this
2 is happening.

3 And we felt like in light of that, your Honor, the
4 corroboration of the evidence of these statements was
5 sufficient on the burden that we were putting forward. And the
6 witness also, as noted, is in the Dominican Republic, so I
7 think that complicated the matters.

8 THE COURT: Is there any reason that you couldn't --
9 just because the defendant is contesting this and because the
10 witness could be made available, even if only remotely, I'm
11 inclined to give you a choice of either adjourning this
12 proceeding and either submitting an affidavit or ideally
13 calling this witness, even if it's remote, unless there's any
14 objection to having that witness called remotely, I think, or
15 my denying the request to apply this enhancement.

16 MS. KUDLA: Your Honor, if I just may have one moment
17 with my colleague?

18 THE COURT: Sure. Take your time.

19 (Counsel confer)

20 MS. KUDLA: Your Honor, I think in light of the length
21 that this case has been pending and all of the information that
22 has been put forth before your Honor, which is at the Fatico
23 hearing itself through witness testimony, I think it's in the
24 best interest to proceed to sentencing today.

25 THE COURT: Okay. Understood.

1 And for the reason that I just stated, I'm going to
2 deny the request to apply the obstruction of justice
3 enhancement. I found it very concerning, I have to say, and I
4 think it's a really a close question as to whether the
5 government has met its burden.

6 As I noted, the government is permitted to consider
7 hearsay at a sentencing, but there have been cases where the
8 Second Circuit has found district court's reliance on hearsay
9 to be improper. And so I'm going to deny that request to apply
10 the enhancement, and I'm not going to consider that conduct
11 today.

12 So with that said, why don't I make my rulings with
13 respect to the other contested enhancements from the Fatico
14 hearing?

15 To reiterate for the record, there are four
16 enhancements in dispute. One, whether a drug weight of
17 310 kilograms of cocaine is attributable to the defendant
18 pursuant to guideline provision 2D1.1a(5) and c(2); two,
19 whether a firearm was possessed pursuant to 2D1.1b(1); whether
20 the defendant maintained a premise for purposes of distributing
21 narcotics pursuant to 2D1.1b(12); and whether the defendant was
22 an organizer or leader of this narcotics conspiracy pursuant to
23 3B1.1a.

24 There's a related dispute as to whether Mr. Rodriguez
25 is safety valve eligible, which I'll address, and conclude that

1 he is not in light of my findings with respect to his role and
2 with respect to the firearm possession.

3 So, first, I find that the 310 kilograms of cocaine is
4 attributable to Mr. Rodriguez-Diaz. It's well established that
5 a narcotics conspiracy, the quantity of drugs that was
6 reasonably foreseeable to the defendant, is attributable to
7 him. And at the Fatico hearing, the government presented
8 credible evidence that that amount of cocaine was reasonably
9 foreseeable to him.

10 In particular, we heard extensive testimony from a
11 cooperating witness, testifying under the pseudonym Jose Diaz,
12 about how this drug smuggling conspiracy operated and the
13 amount of cocaine that was imported in each shipment. Mr. Diaz
14 testified that Mr. Rodriguez-Diaz directed the operations at
15 the Sweet Produce warehouse, which acted as a front for
16 importing cocaine.

17 According to Mr. Diaz, Mr. Rodriguez-Diaz was the one
18 who arranged the shipments with his contacts in the
19 Dominican Republic. Mr. Rodriguez-Diaz was present when the
20 shipments were delivered to the warehouse, usually concealed in
21 shipments of liquid sugar. Mr. Rodriguez-Diaz was the one who
22 identified the boxes and the shipment that contained cocaine,
23 and Mr. Rodriguez-Diaz directed Mr. Diaz and other warehouse
24 employees to unload the cocaine and transport it to a cigar bar
25 for further distribution.

1 Mr. Diaz further testified that between December 2019
2 and March 2021, the Sweet Produce warehouse received at least
3 five drug shipments, totaling 310 kilos. The breakdown was
4 approximately 60 kilograms in the first shipment, 40 in the
5 second, 90 in the third, and then 120 that were seized by DEA
6 agents in March of 2021, which was spread across two shipments.

7 I found Mr. Diaz to be credible, and I conclude that
8 the government has demonstrated by a preponderance of the
9 evidence that 310 kilograms of cocaine was reasonably
10 foreseeable to him and personally overseen by him.

11 Second, I conclude that the firearm possession
12 enhancement applies. The Second Circuit recently emphasized
13 that for this two-level enhancement to apply, the firearms
14 possession only needs to have been reasonably foreseeable to
15 the defendant. That was in *United States v. Batista*, 684 F.3d
16 333 at 343.

17 This means that the defendant himself does not need to
18 have personally possessed or even constructively possessed the
19 firearm. *Batista* explained that the enhancement applies as
20 long as one member of the conspiracy possessed the firearm in
21 furtherance of this scheme and that such possession was
22 reasonably foreseeable to the defendant. Based on the evidence
23 presented at the Fatico hearing I conclude that the standard
24 was met.

25 We heard testimony both from Mr. Diaz and another

1 cooperating witness who testified under the pseudonym
2 Carlos Garcia, that Mr. Rodriguez-Diaz obtained a handgun over
3 the course of the conspiracy and hid the handgun primarily at
4 the warehouse. Mr. Diaz further testified that the reason
5 Mr. Rodriguez-Diaz obtained this handgun was out of concern
6 that others might rob them of the cocaine.

7 The Court recognizes that there were some
8 inconsistencies between Mr. Diaz and Mr. Garcia's testimony –
9 specifically, with regard to the details of when Mr. Garcia
10 first saw the handgun. The Court finds, however, that these
11 inconsistencies were relatively minor and were not sufficient
12 to overcome the overall credibility of both witnesses or their
13 repetitive testimony about the handgun.

14 In any event, even if the Court were to disregard the
15 cooperator testimony about the gun, the government has still
16 demonstrated by a preponderance of the evidence that the
17 firearms possession was reasonably foreseeable to
18 Rodriguez-Diaz.

19 We heard testimony from Officer Jorge Villa that on
20 March 12, 2021, he helped search the Sweet Produce warehouse
21 and found a handgun in a small storage area. The storage area
22 was located in the same building where Mr. Rodriguez-Diaz
23 direct the unloading and further distribution of the cocaine
24 shipments as described by Mr. Diaz and Mr. Garcia.

25 The district court in *Batista* explained that physical

1 proximity between the gun and the drug trafficking activity is
2 "one of the most clearcut methods" of demonstrating a firearm
3 was reasonably foreseeable to the defendant. That's the
4 district court decision in *Batista*, 732 F.Supp. 2d at 97.

5 Furthermore, guns are a recognized tool of the drug
6 trade. That's *Batista* at 343. And we heard testimony from
7 Mr. Diaz that Mr. Rodriguez-Diaz had been smuggling cocaine
8 into the United States for around five years. Thus, given
9 Mr. Rodriguez-Diaz's experience in the drug trade as well as
10 his control over the warehouse operations on a day-to-day
11 basis, it was reasonably foreseeable to him that a gun would be
12 kept on the premises, even if that gun wasn't personally
13 possessed by him.

14 Third, I find that the defendant maintained a premise
15 for distributing cocaine. The Second Circuit has made clear
16 that controlling access or activities to the premise is enough
17 for the enhancement to apply. Even if the defendant did not
18 have a possessory intent. For example, in *United States v.*
19 *Holly*, 638 F.Appx 93, the defendant had unrestricted access to
20 the apartment where the drugs were stored, even though he did
21 not necessarily own or rent the apartment.

22 Similarly, although Mr. Rodriguez-Diaz did not own the
23 Sweet Produce warehouse in name, the government presented
24 sufficient evidence that he had full control over its
25 activities. Mr. Diaz and Mr. Garcia both testified that the

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1 warehouse operated completely under Mr. Rodriguez-Diaz's
2 direction, including both the produce front and the drug
3 trafficking activities.

4 Both witnesses also testified that Mr. Rodriguez-Diaz
5 held the keys to the warehouse. He had access at any time of
6 day, and he was, for all functional purposes, the boss of the
7 premises. The government has thus demonstrated by a
8 preponderance of the evidence that Mr. Rodriguez-Diaz
9 maintained the warehouse for the purpose of distributing
10 cocaine.

11 Fourth, I find the defendant's role in this conspiracy
12 was that of an organizer or leader. Comment 423B1.1 lists
13 factors to consider when deciding if a defendant had a
14 leadership role. Those factors include, among other things,
15 the exercise of decision-making authority, recruitment of
16 accomplices, degree of participation and planning or organizing
17 the offense, and the degree of control and authority exercised
18 over others.

19 Mr. Rodriguez-Diaz argues that he was only a minor
20 participant in the conspiracy, but the evidence presented at
21 the Fatico hearing indicate otherwise.

22 Mr. Diaz testified that when he met Mr. Rodriguez-Diaz
23 in 2016 in the Dominican Republic, Mr. Rodriguez-Diaz talked to
24 him about importing cocaine into the United States. Mr. Diaz
25 subsequently introduced Mr. Rodriguez-Diaz to a supplier for

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1 which Mr. Diaz received a commission.

2 Mr. Garcia further testified that in 2019,
3 Mr. Rodriguez-Diaz asked him if he wanted to work for the
4 Sweet Produce company, and Mr. Garcia subsequently became
5 involved in the drug conspiracy.

6 This shows that Mr. Rodriguez-Diaz played a primary
7 role in both initiating this scheme and recruiting accomplices.

8 Between Mr. Diaz and Mr. Garcia, we also heard
9 consistent testimony that Mr. Rodriguez-Diaz set the drug
10 prices, that he traveled back and forth between the
11 United States and the Dominican Republic to oversee the
12 packaging of the cocaine, and that he was the only person who
13 knew which liquid sugar pallets contained cocaine when they
14 arrived at the warehouse.

15 We heard that Mr. Rodriguez-Diaz instructed his
16 girlfriend and gave her the necessary funds to place the order
17 for each cocaine shipment. And as I've already mentioned, we
18 heard that Mr. Rodriguez-Diaz controlled everything that
19 happened at the warehouse.

20 This shows that he exercised a degree of
21 decision-making authority, a high degree of control over
22 coconspirators, and overall was the linchpin of this
23 conspiracy's operations.

24 Again I found this testimony to be credible, and I
25 conclude that the government has demonstrated by a

1 preponderance of the evidence that Mr. Rodriguez-Diaz was an
2 organizer and leader of this scheme.

3 As a result of those findings, Mr. Rodriguez-Diaz is
4 not safety valve eligible pursuant to 18 United States Code
5 Section 3553(f). The statute sets forth five criteria for
6 safety valve eligibility.

7 One of those is that the defendant did not possess a
8 firearm or other dangerous weapon or induce another participant
9 to do so in connection with the offense. Another criteria is
10 the defendant was not an organizer, leader, manager, or
11 supervisor of others in the offense.

12 Now, I understand that the defendant contests whether
13 the standard for possessing a firearm in the context of safety
14 valve eligibility is the same as the standard for the firearm
15 enhancement, but I need not decide that today because either
16 way, I have found that he is a leader or organizer in this
17 offense, and I don't need to rely on the firearm possession to
18 conclude that he is not safety valve eligible.

19 So with those findings, I'm ready to proceed to
20 sentencing.

21 In connection with today's proceeding, I've reviewed
22 the following submissions:

23 The presentence investigation report that was last
24 advised as of October 14, 2022; Mr. Rodriguez-Diaz's sentencing
25 memorandum dated October 26, 2022, with accompanying exhibits.

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1 And then I received supplemental letters on January 10 and
2 January 16. I then have the government's sentencing memorandum
3 dated November 2nd, with supplemental letters, December 21 and
4 January 16. I also received letters regarding sealing of
5 various items.

6 Have the parties received each of these submissions,
7 and am I missing anything?

8 MS. KUDLA: Nothing from the government.

9 MR. CERIMELE: No, your Honor.

10 THE COURT: All right. Thank you.

11 Why don't we begin by discussing the presentence
12 report?

13 Counsel, have you reviewed the presentence report and
14 discussed it with your client?

15 MR. CERIMELE: Yes, your Honor. We've reviewed it.
16 We discussed it with our client. We made a number of
17 non-guidelines objections, which were incorporated into the
18 report, and we've made a number of guidelines objections, which
19 your Honor has just ruled on.

20 THE COURT: Do you have any additional objections
21 other than the ones regarding the guidelines that I ruled on
22 that you want me to address today?

23 MR. CERIMELE: No, your Honor.

24 THE COURT: All right. Thank you.

25 Mr. Rodriguez-Diaz, have you had enough time and

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1 opportunity to review the presentence report and discuss it
2 with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Does the government have any
5 objections to the presentence report?

6 MS. KUDLA: Your Honor, the government just has one
7 clarification that should be noted in PSR Paragraph 12. There,
8 it just refers to a defendant's ex-wife as a CC1, and I think
9 in light of the later personal biography, I think it would be
10 better to say that Esnerlin Marcial Pena as a clarification.

11 THE COURT: Do you want me to put the name in?

12 MS. KUDLA: Yes. I think that will help for
13 clarification for the record, so we should put that in.

14 THE COURT: Can you spell that for the record, please?

15 MS. KUDLA: E-S-N-E-R-L-I-N, M-A-R-C-I-A-L, P-E-N-A.
16 And that would be to Paragraph 12.

17 Your Honor, there are two points related to the
18 factual findings that that I wanted to clarify for the record
19 before we go forward.

20 THE COURT: Please.

21 MS. KUDLA: So the organizer and leader enhancement
22 under 3B1.1a, based on the Court's findings, and it seems
23 clear, that you have also found there were five or more
24 participants. You had noted there was a supplier, Mr. Garcia,
25 Mr. Diaz, a girlfriend, and then people involved in the

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1 packaging. I just want to make sure the record is clear that
2 this conspiracy involved five or more participants.

3 THE COURT: It did. Thank you for that clarification.

4 MS. KUDLA: And then the last item, and this was not a
5 contested guideline, but want to make sure all the parties are
6 aware that -- I think there was under 2D1.1b(16)(C), an
7 enhancement for the importation of -- directly involved in the
8 importation of cocaine, a plus-two enhancement.

9 THE COURT: Yes. I didn't get to that. Yes, but
10 that's right. So let's make sure that we're all on the same
11 page.

12 In light of my factual findings that were disputed at
13 the Fatico hearing, the guidelines calculation in the
14 presentence report is accurate; is that correct?

15 MS. KUDLA: That is correct, your Honor.

16 THE COURT: Okay. And I agree with that. And I agree
17 with the offense level computation on Page 9 of the presentence
18 report, and similarly find that Mr. Rodriguez-Diaz's base
19 offense level is 36. That's in Paragraph 36. He gets the
20 firearm enhancement, Paragraph 37. That's two points. He gets
21 the premise enhancement. That's two points. That's
22 Paragraph 38. He gets the aggravating role enhancement that we
23 just discussed about, the importation of cocaine. That's two
24 points. That's Paragraph 39. And then he gets the four-point
25 role adjustment, and that resulted in an adjusted offense level

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1 of 46.

2 In light of the fact that I am not granting the
3 obstruction enhancement, I understand that there's no objection
4 to the three points off for acceptance of responsibility; is
5 that correct?

6 MS. KUDLA: Your Honor, one moment.

7 (Counsel confer)

8 MS. KUDLA: Your Honor, the reason we're hesitating is
9 we do not dispute the two-point reduction. The question is
10 whether there would be a further one-point reduction about the
11 intention of entering a plea and assisting authorities. I
12 think the larger point too, in light of the instruction, is
13 Mr. Rodriguez-Diaz has taken various positions with the
14 presentence report that seems to mitigate his role in this
15 offense, which are directly contradicted by his proffer
16 statements and by what the Fatico evidence was at trial. And
17 in light of that, we don't feel that he is fully taking
18 acceptance of responsibility. But what we can do, your Honor,
19 is rather than contest that point on a guideline --

20 THE COURT: 3553(a) factors?

21 MS. KUDLA: Exactly. I think that's the best way to
22 do it. So there's no objection to --

23 THE COURT: And that was the approach that I intended
24 to take as well, is to grant the three acceptance points, but
25 consider whatever arguments you'd like to make in that respect.

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1 And so then that leaves us with a total offense level of 43.

2 And in any event, as you well know, obviously, it's
3 not affecting what the guidelines are. So the guidelines have
4 a sentence of life and then, of course, there's the statutory
5 mandatory ten-year mandatory minimum.

6 Okay. With all that said, I'll note for the record --
7 and I know Mr. Rodriguez is well aware of the sentence
8 guidelines. We've talked about them in a number of different
9 contexts here. At one time, they were mandatory, meaning
10 judges were required to follow the guidelines. They're no
11 longer mandatory, but judges must nevertheless consider the
12 guidelines when considering an appropriate sentence.

13 So with all that said, why don't I hear from the
14 parties? I understand that Mr. Rodriguez-Diaz is seeking a
15 variance. I will note the probation department recommended a
16 variance of 120 months -- to 120 months, but why don't I hear
17 from the government?

18 MS. KUDLA: Your Honor, one note on the probation's
19 variance, at the time that probation had to provide its
20 recommendation to the Court, it was not aware of the evidence
21 that would come forth at the Fatico hearing. So I think that
22 that recommendation has to be taken in that light.

23 I think the government, after the full investigation
24 in procedural posture of this case in arriving today, still
25 believes that 240 months is still an appropriate sentence for

1 Mr. Rodriguez-Diaz, even though the Court is not taking into
2 consideration the obstruction of justice charge.

3 And that is on two factors, the scope and the nature
4 of this conspiracy; the second factor being
5 Mr. Rodriguez-Diaz's central role in this conspiracy. And then
6 a third factor, your Honor, and perhaps most importantly,
7 because it reflects on deterrence in the future, is his ability
8 to accept responsibility for this wrongful conduct, to have
9 some type of self-reflection for how this conduct has impacted
10 others in going forward. And I think it leaves a serious risk
11 of recidivism if a substantial sentence is not imposed here.

12 I think the evidence has been put forward at the
13 Fatico hearing and throughout the course of the pendency of
14 this case establishes that, for a period of years,
15 Mr. Rodriguez-Diaz was at the center of a large-scale cocaine
16 importation conspiracy into this country.

17 Between just 2019 and 2021, we have already found more
18 than 300 kilos of cocaine were imported into the United States
19 from the Dominican Republic. That cocaine only had one place
20 to go: It's the streets of New York, it's the streets of
21 New Jersey, and the impact on the neighborhoods and the
22 communities, both in terms of the individuals living there, the
23 small businesses, the affect of addiction, this can't be
24 minimized in any way. And this isn't someone who is selling
25 drugs on a street corner for dime bags. This is someone at the

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1 top of the organization who is leading the importation into
2 this country, a key factor that makes narcotics trafficking
3 profitable and continues in the future.

4 And that was Mr. Rodriguez-Diaz's role. And I think
5 for 3553(a) factors, it is important to note in the factual
6 finding also stated by the Court, that this didn't start in
7 2019. Mr. Rodriguez-Diaz was introduced to Mr. Diaz as someone
8 who could import cocaine into the United States successfully as
9 early as 2016, and he did so on evidence on the record with at
10 least 40 kilos of cocaine at that point in time.

11 He then immigrated to the United States where he then
12 expanded that operation, and I think what you saw in evidence
13 supported by the cooperator's testimony was a CPB record,
14 statements from Caribbean Liquid Sugar. If they were called to
15 testify, they would have said that they began receiving orders
16 in 2017 into 2018. This was before the charged conspiracy.
17 And those records match CPB shipments as well. And they also
18 match Mr. Rodriguez-Diaz's travel records into the
19 Dominican Republic.

20 So this conspiracy goes beyond even just the 300 kilos
21 that we're looking at here. But it should be considered on the
22 characteristics of the defendant. And then, your Honor, I
23 think the issue of the gun also adds to the serious nature of
24 this offense. It takes the risk that is involved, not only to
25 the neighborhoods and the communities from the drug addiction

1 itself, but now also to the risk that we all know is readily
2 apparent in narcotic's trafficking. And this all combines to
3 the fact that, based on his role, the nature of the offense,
4 that a substantial sentence is warranted.

5 But getting to that third point I mentioned. Your
6 Honor, in terms of the acceptance of responsibility and our
7 concern about whether or not this defendant would reoffend in
8 the future, that is one of the largest concerns here. He is at
9 the center of the conspiracy. He is presented to the Court as
10 someone who is a caring and loving father, yet the facts
11 reflect that his ex-girlfriend, who currently is the sole
12 caretaker of two of his children, was one of the individuals
13 directly involved in this conspiracy. If you care about your
14 kid, you don't turn to the mother to have her directly
15 participate in this conspiracy in this way.

16 He then turned to another girlfriend, his
17 coconspirator, Ironellys Paulino-Nolaso, to open the warehouse.
18 We know that was his idea based on the fact he had been doing
19 this for a while before.

20 He is turning to other people in his life who
21 supposedly he cares about, to engage them in drug trafficking
22 and narcotics trafficking. This is a person who is not
23 reflecting on how his actions are impacting those around him,
24 including his children.

25 And then in light of him taking responsibility for

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1 these crimes, it is very concerning to the government that the
2 statements he made to probation just are completely
3 inconsistent with all facts, including his own statements. He
4 told probation he was used by coworkers to complete the task of
5 loading and unloading shipments, and he was unaware of the
6 amount of drugs he was handling.

7 The proffer statements, which he has now put at issue,
8 he knew the shipments contained a hundred grams of cocaine. He
9 knew where to find the cocaine because it had the coordinates.
10 He directed the cocaine to go the bar. These were all
11 corroborated by the cooperative statements as well, and also he
12 got paid a particular amount per kilo shipment. It's just not
13 logical he would not have any idea how much cocaine was going
14 through there or that he never saw the cocaine.

15 These statements to probation, when he knew he had to
16 be truthful and he had to say everything truthfully to
17 probation show that he's just not taking responsibility, and
18 that is one of the largest concerns that we have here. And
19 that is why the government is consistent with its
20 recommendation that 240 months is appropriate.

21 If the Court has any questions, we're happy to
22 address.

23 THE COURT: I don't think so. Thank you.

24 Counsel, whenever you're ready.

25 MR. KLINGEMAN: Good morning, your Honor.

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1 Henry Klingeman for Adriano Rodriguez-Diaz.

2 Two things, at the outset. We ask the Court,
3 respectfully, to impose a sentence no greater than the
4 120 months mandatory minimum for reasons I'll discuss.

5 It's consistent with the probation recommendation, and
6 I will note that the probation recommendation was based on the
7 same guidelines findings that your Honor has adopted today.

8 The probation accepted the government's advocacy at
9 the presentence level and subsequently made the recommendation
10 for 120 months. So we'd ask the Court to adopt that and impose
11 that sentence.

12 I want to briefly respond to the government's opening
13 salvo regarding the war on drugs. I stood in counsel's
14 position 25 years ago and made the same arguments. And if our
15 laws and policies don't change, her successor is going to stand
16 here 25 years from now making the same arguments.

17 Mr. Rodriguez-Diaz is an impoverished Dominican who
18 made a terrible choice to get involved in the drug trade. That
19 doesn't make him responsible for polluting the neighborhoods of
20 New York. That is a collective responsibility and a collective
21 failure that is way beyond the scope of this hearing. But I
22 don't want that allegation to go unremarked upon.

23 Let's talk about the 3553(a) factors.

24 Mr. Rodriguez-Diaz is, indeed, the father of four
25 children about whom he cares deeply, and obviously he'll be

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1 able to speak to that far more meaningfully than I can. He's
2 also from an extended family of siblings. His, what I'll refer
3 to as, stepparents are deeply important to him. He does not
4 know his birth parents. It's another part of his origin story
5 that perhaps led him to this place. But in any event, he's
6 grown up in an entirely disadvantaged manner, and yet has
7 managed to maintain these family relationships.

8 As to whether he's involved other family members in
9 his activities, that's unproven, certainly uncharged, and I'd
10 ask the Court to weigh it against Mr. Rodriguez-Diaz's obvious
11 family affiliations.

12 I mentioned that he grew up poor. Again, that's
13 something he can address far more meaningfully than I can. But
14 for someone to grow up without sufficient food and with no
15 education is something that is just hard, for me, at least, to
16 comprehend, how he persevered and survived. And, frankly, he
17 didn't survive, in fact, and he finds himself here facing, at a
18 minimum, ten years in federal prison in a foreign country. So
19 he has definitely not had the kind of advantages or
20 opportunities that we would like to afford our fellow man.

21 In addition, he has a kind of cognitive disability.
22 It's been diagnosed by doctors in the Dominican Republic as
23 early stage Alzheimers. I'm not a medical expert. We were not
24 able to put forward an authoritative diagnosis. But clearly as
25 a result of some trauma he suffered in a car accident or other

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1 medical causes, he has cognitive difficulties that will
2 apparently persist through his early-middle age and into his
3 old age.

4 We noted in our sentencing memo that he was detained
5 or had been detained through the COVID pandemic. The
6 conditions at the Essex County Jail, where he spent most of his
7 pretrial detention, were not healthy in any way, shape, or
8 form; not conducive to rehabilitation, certainly; and, of
9 course, he was moved here in light of the accelerated court
10 proceedings last fall. Nevertheless, he's managed to
11 participate in programs in custody.

12 This morning, he provided me with six certificates --
13 excuse me, seven certificates that he's received since he's
14 been in New York at MDC Brooklyn in various skills and
15 vocational programs involving bookkeeping, budgets and
16 financial reports, business acumen, commercial driver's license
17 test prep program, developing creative skills, developing
18 marketing skills, and other skills that he could use when and
19 if he's given the opportunity to obtain a legitimate
20 employment, presumably upon his release from custody. So he's
21 showing initiative while in custody to, as the government says,
22 reflect upon his life, and apparently is trying to make
23 improvements so that he can reintegrate himself.

24 Finally, with respect to acceptance of responsibility,
25 Mr. Rodriguez-Diaz, in an unusual fashion, has already

1 addressed this Court on the issue of acceptance and
2 responsibility.

3 As your Honor may recall in July of 2022, about seven
4 months ago, he stood before the Court, I stood next to him, and
5 he addressed the Court directly. And he said he was prepared
6 to plead guilty. He was willing to accept responsibility for
7 his conduct. But what he didn't want to accept responsibility
8 for was the conduct of others. And your Honor recited the
9 legal principles around conspiracy and around the various
10 enhancements, and I don't fault Mr. Rodriguez-Diaz for not
11 understanding the full nuances, if I can call them that, to a
12 layperson, of the law around these issues.

13 But what he's essentially saying, your Honor, is judge
14 me on what I did, not on what others did. And that's a
15 fundamental human instinct when we're being judged. And I
16 understand that, and I hope the Court understands that, but he
17 certainly, unfailingly, has accepted responsibility. In a
18 sense, he came forward early on, he proffered to the
19 government, it was unsuccessful, but he admitted his
20 involvement in the cocaine importation conspiracy and
21 distribution here in the United States. He never wavered,
22 never hesitated.

23 But what he denied is knowing about the gun. Well,
24 maybe he didn't know about the gun. But as your Honor has
25 pointed out, the law in the circuit is if the gun is reasonably

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1 foreseeable, then the gun is his responsibility as much as any
2 other member of the conspiracy. It doesn't mean he knew about
3 the gun, subjectively. It just means that he's responsible for
4 the gun.

5 I'm not minimizing his conduct. I'm not minimizing
6 the scope of his activity. I just want his acceptance of
7 responsibility to be placed in the proper context. And, of
8 course, I think his early and often repetition of his
9 acceptance of responsibility is evidence of its credibility.

10 So those are the nature and characteristics of the
11 offender.

12 Going to the next factor, the need for the sentence to
13 reflect the seriousness of the offense. We're talking about a
14 life sentence guidelines advisory -- advisory guideline range.
15 It's hard to imagine that any sentence your Honor chooses to
16 impose, including the mandatory minimum of 10 years, would fail
17 to reflect the seriousness of this conduct. So I'm not going
18 to belabor that.

19 The need for this sentence to afford adequate
20 deterrence, that factor goes to general deterrence. I, again,
21 I'm not going to quarrel with the government's --

22 THE COURT: I think it goes to general and specific,
23 and I think the government is making the argument with respect
24 to the specific deterrence as well, but please proceed.

25 MR. KLINGEMAN: That was the next factor, I will

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1 address specific deterrence. I will get to that in a moment.
2 But in terms of general deterrence, I don't think this sentence
3 is going to have an impact on general deterrence for reasons I
4 opened with.

5 Having said that, the need for this sentence to
6 provide specific deterrence and to protect the public,
7 presumably, as the government expressed its concern, from
8 Mr. Rodriguez going forward, given his age, the fact he's in
9 his 40s and the fact he will not leave prison for a minimum of
10 a decade, all in, subject to good time and obviously credit
11 since he's been arrested, studies show the recidivism rate of
12 someone his age, or the age he will be, in his early 50s, is in
13 the single digits. And the fact he's going to be removed from
14 the United States doesn't necessarily not make it our problem
15 anymore. We have to obviously concern ourselves about
16 returning dangerous criminals to their home countries with whom
17 we have friendly relationships.

18 Having said that, I think your Honor can conclude
19 fairly that the specific deterrence afforded by a 10-year
20 sentence will be adequate to the purpose.

21 And then the need for the sentence to provide the
22 defendant with a needed education or vocational training,
23 medical care, et cetera. Obviously, we count on the Bureau of
24 Prison to deliver those services. Whether they do in every
25 case is actually case dependent. But here, of course,

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1 Mr. Rodriguez-Diaz has already sought at MDC to engage in
2 vocational and other skills training, and we expect him to do
3 the same wherever he's designated.

4 And with respect to medical care, I would hope that
5 the people who receive him, wherever he is, will take into
6 account whatever cognitive issues he's got and deal with them
7 as they're supposed to under law.

8 Family, and probably most significant in this
9 particular situation, is the need to avoid unwarranted
10 sentencing disparities. So far as I can tell, there may be a
11 fugitive in this case. I don't know if he's been charged. But
12 a person who the law enforcement arrested and then released is
13 gone. I don't know anything about him. But I do know that
14 there are three other defendants who have been prosecuted, two
15 of whom testified before your Honor. I'll say very little
16 about them other than I don't believe they're in custody, and
17 if they are, I'm not aware of what specific sentence they've
18 gotten. But I'm confident that those sentences are
19 dramatically lower than ten years.

20 The only person I have real knowledge about, the
21 codefendant, Ms. Ironellys Nolasco, who received a sentence of
22 time served at the time she was sentenced by your Honor. She
23 did approximately 18 months in custody, as I understand it.
24 She was subject to the same guidelines calculation as
25 Mr. Rodriguez-Diaz, a similar type of guidelines calculation

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1 based on a plea agreement that she had. We didn't have a plea
2 agreement. But she was level 43.

3 She, of course, got a safety valve -- she was safety
4 valve eligible based on her proffer and other factors that
5 Mr. Rodriguez-Diaz is not qualified for based on the Court's
6 rulings. But nevertheless, she starts out sky high the way he
7 has, but probation similarly recommended for her a sentence of
8 120 months, evidently subject to the safety valve. And then
9 the government, I believe, asked for 96 months at sentencing,
10 and your Honor gave the sentence that your Honor gave.

11 We'd ask that the sentence of 120 months, which is the
12 minimum that your Honor can impose here, is more than
13 sufficient, but certainly it's six times the sentence that
14 Mr. Rodriguez-Diaz is eligible at a minimum level, maybe five
15 times. My math is rough. But to avoid that disparity, I would
16 ask your Honor to please consider the sentences imposed on the
17 other defendants.

18 So the final point, of course, is that
19 Mr. Rodriguez-Diaz is here, initially as a legal visitor to the
20 United States. Now, he will no longer be considered a legal
21 visitor and be removed. So I would ask the Court, finally, to
22 take that into account and impose the 120 months.

23 Thank you.

24 THE COURT: Thank you.

25 Mr. Rodriguez-Diaz, I read your letter, but is there

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1 anything else you'd like to say today?

2 THE DEFENDANT: Good morning.

3 THE COURT: Good morning.

4 THE DEFENDANT: I would like to thoroughly apologize.
5 I'd like to say I'm sorry to the U.S. Government, I'd like to
6 personally apologize to the judge, and I'd like to apologize to
7 my family, who hasn't arrived yet that are on their way here,
8 but they haven't arrived yet. And I'd also like to apologize
9 to my family.

10 And I'd like to ask my family that, even though I
11 won't be there, that they will never see me again in a court.
12 I would like to say they'll never see me in any part of this
13 country. I truly apologize.

14 Thank you.

15 THE COURT: All right. Thank you.

16 So I'm required to consider the advisory guidelines
17 range as well as other factors that are outlined in a provision
18 of the law that we've, of course, talked about. It's
19 18 United States Code, Section 3553(a) and I've done so.

20 Those factors include but are not limited to: The
21 nature and circumstance of the offense and the personal history
22 and characteristics of the defendant because every defendant
23 must be considered individually as a person.

24 Judges are also required to consider the need for the
25 sentence imposed to reflect the seriousness of the offense,

1 promote respect for the law, provide just punishment for the
2 offense, afford adequate deterrence to criminal conduct,
3 protect the public from future crimes of the defendant, and
4 avoid unwarranted sentencing disparities, among other things.

5 So I don't think there's a dispute as to the
6 seriousness of the offense. This was a very sophisticated,
7 large scale cocaine importation and distribution enterprise
8 that resulted in the DEA seizure of approximately 120 kilos of
9 cocaine, over a million dollars in cash, and a firearm. And
10 Mr. Rodriguez-Diaz participated for at least five years and
11 imported hundreds of kilos of cocaine.

12 Drugs like this cause real harm to real people. And
13 to counsel's point, Mr. Rodriguez-Diaz is not alone responsible
14 for the harm to various communities, but he was a part of it.
15 And drugs like these, they destroy neighborhoods, they fuel
16 addiction, they spawn violence, they destroy people and
17 communities, and that harm is real, and he contributed to that
18 harm.

19 Now, the government disputes the degree to which
20 Mr. Rodriguez is accepting responsibility for this conduct. He
21 has admitted his conduct, but he has -- he's admitted his
22 participation in this conspiracy, but he's disputed a number of
23 different factual assertions.

24 As I already noted, he was involved in this conspiracy
25 for years, and he played a very significant role. He

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1 communicated with the cocaine supplier. He placed orders of
2 liquid sugar through the liquid sugar companies and cash for
3 money orders, used fake identities to avoid detection, traveled
4 to the Dominican Republic to oversee the packaging, directed
5 that the cocaine be transported for further distribution, and
6 set the sale price. So he was, as I already found, an
7 organizer/leader in this conspiracy and played a really
8 important role in it.

9 And so the sentence needs to promote respect for the
10 law, to protect the public against future crimes of the
11 defendant, afford deterrence, both general and specific, and it
12 must do so.

13 As I already noted, have to consider unwarranted
14 sentencing disparities. As counsel rightly noted, the only
15 defendant I've sentenced to date in this case is
16 Ironellys Paulino-Nolaso, who received a sentence of time
17 served, which was about 18 months. There were very specific
18 reasons I did that in that case, and we can turn back to the
19 transcript of that case. But she was eligible for safety valve
20 treatment, and she played a role that was relatively minor, at
21 least in comparison to Mr. Rodriguez-Diaz.

22 I've considered those factors. I've also considered
23 other personal factors to Mr. Rodriguez-Diaz. At the age of
24 43, he has no other criminal history. He has four children.
25 I've read the letters from family members. I have read about

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1 his difficult upbringing in the Dominican Republic, growing up
2 in poverty, in an overcrowded household and lacking food and
3 education, and suffering from a head injury. I've read about
4 the health conditions he -- or doctors in the
5 Dominican Republic have said have followed.

6 And I've considered the harsh conditions of
7 confinement, particularly the pandemic. And I think this is
8 really real. I think it makes time so much harder to do. And
9 I've considered that. I've also considered the fact he will
10 likely spend additional time in ICE custody, awaiting
11 deportation to the Dominican Republic.

12 So I've considered that, and I'm ready to impose
13 sentence. And I'm not going to consider the alleged
14 obstruction of justice, but I am ready to impose sentence.

15 So could you please stand, Mr. Rodriguez-Diaz?

16 It's the judgment of this Court that you be committed
17 to the custody of the Bureau of Prisons for a term of
18 120 months to be followed by a term of supervised release of
19 five years. And I believe that this sentence is sufficient but
20 not greater than necessary to comply with the purposes of
21 sentencing set forth in the law.

22 You can be seated now.

23 I want to say a few things, and then I'm going to read
24 all the conditions of supervised release and other aspects of
25 the sentence.

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1 Number One, I think ten years is a really long
2 sentence, and I think we sometimes in court, we have to remind
3 ourselves of how long 10 years is in an individual's life. And
4 so even though this was the mandatory minimum, this is a very
5 long sentence, and I just want that to hit home.

6 I think Mr. Rodriguez-Diaz deserves a very significant
7 sentence for his conduct, but I also think this is a very
8 significant sentence, and I don't want anyone to lose sight of
9 that. That's one thing I wanted to say.

10 I wanted to say that had I relied on the obstruction
11 of justice allegations, I would have given a more severe
12 sentence because I do take that very seriously. And I wanted
13 to be clear that if anyone tries to dissuade people from
14 testifying, getting them to change their testimony, threatening
15 them, that it's important to prevent other people from doing so
16 and say your sentence will be more significant because of that.
17 So I want to note that. But, again, I didn't rely on those
18 allegations for the reasons that I stated earlier.

19 Okay. So with all that said, I'm going to read the
20 conditions of supervised release.

21 So all the standard conditions of supervised release
22 that are on Pages 29 and 30 of the presentence report shall be
23 imposed.

24 Counsel, would you like me to read those out loud, or
25 do you waive their public reading?

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1 MR. KLINGEMAN: We waive.

2 THE COURT: Please make sure you go over them
3 carefully with Mr. Rodriguez-Diaz.

4 I am going to read the mandatory conditions.

5 He must not commit another federal, state, or local
6 crime. You must not unlawfully possess a controlled substance.
7 You must refrain from any unlawful use of a controlled
8 substance. You must submit to one drug test within 15 days of
9 release from imprisonment, and at least two periodic drug tests
10 thereafter determined by the Court, and you must cooperate in
11 the collection of DNA as directed by the probation officer.

12 In addition, in light of the nature of the crime at
13 issue here and the circumstances in which it was carried out, I
14 am imposing the first special condition recommended by the
15 probation department, that you shall submit your person and any
16 property, residence, vehicle, papers, computer, other
17 electronic communication, data storage devices, Cloud storage
18 and media, and affects to a search by any United States
19 Probation Office, and, if needed, with the assistance of law
20 enforcement. The search is to be conducted when there's a
21 reasonable suspicion concerning a violation of a condition of
22 supervision or unlawful conduct by the person being supervised.

23 Failure to submit to a search may be grounds for
24 revocation of release. You shall warn any other occupants that
25 the premises may be subject to a search pursuant to this

1 condition. Any search shall be conducted at a reasonable time
2 and in a reasonable manner.

3 Mr. Rodriguez-Diaz will be supervised in the district
4 of his residence, to the extent he's still here. Some of these
5 may be -- all the supervised release conditions may be mooted
6 to the extent he's deported, of course.

7 I want to hear the parties' thoughts on the second
8 recommendation made by the probation department, which reads
9 that if the probation officer determines based on your criminal
10 record, personal history, or characteristics, that you pose a
11 risk to another person, including an organization, the
12 probation officer with the prior approval of the Court may
13 require you to notify the person about the risk and must comply
14 with that instruction. The probation officer may contact the
15 person and confirm you have notified the person about your
16 risk. That's on Page 30.

17 Do the parties have any thoughts on that? If there's
18 no objection, I'll impose it.

19 MR. CERIMELE: Your Honor, we would object to the
20 condition for no other reason than defendant is going to be in
21 custody. I'm not sure how probation would characterize him as
22 a risk to another person under those circumstances. I think it
23 would be a difficult condition to enforce, so we would object
24 to that.

25 THE COURT: To be honest, I haven't seen this

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1 condition before. I assume if there was someone in particular
2 who was at risk, the probation department would ask permission,
3 and I would, of course, notify the person. I'm happy to hear
4 the government out.

5 MS. KUDLA: Your Honor, I think that we have seen this
6 condition before. It's not coming into effect while he's in
7 custody.

8 THE COURT: Of course. It's when he's on supervised
9 release. I recognize that.

10 MS. KUDLA: And I think the issue here is, recognizing
11 that we have not relied on the obstruction of justice, I think
12 the Court can see that the witnesses testifying were terrified
13 in this case. And, in fact, the government did have to move a
14 witness and their family as a result of certain conduct here.

15 So I do think the condition is appropriate. And all
16 it requires is notification to the Court if this risk occurs,
17 and then it would be allowed to notify that person. This is a
18 de minimis amount of involvement on the defendant. And in
19 light of the circumstances of this case, and just based on the
20 appearance of the witnesses testifying, it does seem like it
21 would be warranted despite the --

22 THE COURT: Who's the "you" in this? So if the
23 probation officer determines, based on your Criminal History
24 Category -- so that's the defendant -- personal history or
25 characteristics that you pose a risk to another person,

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1 including an organization, and the probation officer, with
2 prior approval of the Court, may require you to notify the
3 person about the risk, and you must comply with that
4 instruction -- it's not clear to me what the instruction is and
5 why we would want Mr. Rodriguez-Diaz's notifying someone about
6 the risk as opposed to the probation officer. I'm just a
7 little confused by the way it's written. I know the government
8 attorneys didn't write this, but I'm a little bit confused.

9 MS. KUDLA: Your Honor, my colleague, Ms. Steiner, has
10 more experience.

11 THE COURT: Please.

12 MS. STEINER: I have seen this special condition
13 proposed in at least one other case. I think typically, and,
14 again, I don't want to speak fully on behalf of probation, but
15 the thinking behind it is, for example, if the defendant were
16 to apply for certain employment, probation could -- and they
17 thought certain individuals in that environment could be put at
18 risk, potentially being recruited by the defendant or having
19 their facility used by the defendant for ill purposes, the
20 probation office, as a precaution, could require the defendant
21 to notify those in his environs that he has this particular
22 criminal history.

23 Again, it's a precaution I think that is warranted,
24 given the fact that in this particular case, you've seen this
25 defendant has affected a great deal of influence on those who

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1 he has worked with and associated with in his immediate
2 environment, and I would expect that that is the thinking
3 behind probation's request here.

4 THE COURT: Okay.

5 MR. KLINGEMAN: Your Honor, I wanted to make precisely
6 the point your Honor was getting to. If the allegation that
7 Mr. Rodriguez-Diaz has threatened people, he should not be the
8 one reaching out to those people to say, hi, I'm out of prison,
9 and I'm in your neighborhood. I think what ought to happen is
10 probation ought to have the authority to say to
11 Mr. Rodriguez-Diaz on supervised release, have no contact with
12 people X, Y, and Z, and direct him not to contact those people.
13 And if the Court sees fit, it's also appropriate for probation
14 to contact those people, X, Y, and Z, and by the way,
15 Mr. Rodriguez-Diaz has been released from custody and he's
16 living in such and such area.

17 I think those are entirely reasonable to keep -- it's
18 a prophylactic matter to keep Mr. Rodriguez-Diaz out of
19 trouble, and it also serves the purpose of warning people who
20 may have some concern. But the idea that Mr. Rodriguez-Diaz is
21 supposed to reach out to these folks, I think, is
22 objectionable.

23 THE COURT: I agree. I'll tell you, I'm going to talk
24 to the probation department separately about this condition. I
25 think it could be worded better if the intention is -- and I'm

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1 sure the government is right as to what the intention is. But
2 I think it could be worded a lot better. I think it's
3 confusing. I think it's lightly moot. I think
4 Mr. Rodriguez-Diaz will be deported, so I'm not going to impose
5 it.

6 Let me say this, Mr. Rodriguez-Diaz, if I find out
7 that you have attempted to retaliate or threatened anyone in
8 any way, you're going to have a real problem. And if it's on
9 supervised release, you should expect to go back to jail. So I
10 want to make very clear, if there ever is a threat against
11 anybody or any efforts to retaliate against anyone in any way,
12 you should expect to -- while you're on supervised release,
13 expect to do more time. So I want to make that clear. But I
14 think the condition is not worded properly. So I'm not going
15 to impose it for that reason.

16 I'm not going to impose a fine because the probation
17 department has reported that it would be difficult for
18 Mr. Rodriguez-Diaz to pay one.

19 I'm required to impose a mandatory special assessment
20 of \$100, which shall be paid immediately.

21 What's the government's position with respect to
22 forfeiture or restitution?

23 MS. KUDLA: Your Honor, there are no forfeiture
24 allegations.

25 THE COURT: Okay. And restitution is not appropriate

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1 here.

2 Okay. So does either counsel know of any legal reason
3 why this sentence I stated cannot be imposed?

4 MS. KUDLA: None from the government.

5 MR. KLINGEMAN: No, your Honor.

6 THE COURT: So that's the sentence that will be
7 imposed, Mr. Rodriguez-Diaz.

8 You have a right to appeal your conviction and
9 sentence, except to whatever extent you may have validly waived
10 that right. If you choose to appeal, the notice of appeal must
11 be filed within 14 days of the judgment of conviction. If
12 you're not able to pay for the cost of an appeal, you may apply
13 for leave to appeal in forma pauperis, which simply means that
14 court costs and filing fees will be waived. If you request,
15 the clerk of court will prepare and file a notice of appeal on
16 your behalf.

17 Are there any open counts that need to be dismissed?

18 MS. KUDLA: Yes, your Honor. At this time, the
19 government moves to dismiss Counts Two and Three.

20 THE COURT: They will be dismissed.

21 Lastly I will just say what I often say at sentencing,
22 because I firmly believe it to be true: I don't think people
23 need be defined by the worst mistakes they've ever made. Look,
24 Mr. Rodriguez-Diaz, I've already found you engaged in really
25 serious criminal conduct, but you don't need to be defined by

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1 that, but whether you are is going to be up to you. The
2 question is, going forward in life, after you serve your time,
3 are you going to live your life in a law abiding and productive
4 way to make your children proud, or are you going to continue
5 in this conduct? And that's going to be up to you to
6 determine.

7 I hope you make the right decision to move forward in
8 a more productive and law-abiding way and a way that you and
9 your family can be proud of, and I wish you luck with that.

10 I understand that there's a request that
11 Mr. Rodriguez-Diaz be housed at the facility in Pennsylvania;
12 is that correct?

13 MR. CERIMELE: Yes, your Honor.

14 THE COURT: Okay. And you specifically want him at
15 that facility? The Bureau of Prisons has a preference for
16 recommendations in areas as opposed to recommendations for a
17 specific facility.

18 MR. CERIMELE: Mr. Rodriguez-Diaz just advised me he
19 would like to be housed at Fort Dix, if as at all possible.
20 That would be the closest to his house.

21 THE COURT: I think what's most helpful if you tell me
22 closest to where, as opposed to the facility, where I think the
23 Bureau of Prisons is less likely to accept the recommendation,
24 but close to, just tell me where he wants to be closest to
25 geographically.

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1 MR. CERIMELE: I believe his last residence, Judge,
2 was Ridgewood, New Jersey --

3 THE COURT: So I'll make that recommendation, as close
4 to Ridgewood, New Jersey, as possible.

5 Are there any other applications at this time?

6 MR. CERIMELE: No, your Honor.

7 MS. KUDLA: No, your Honor.

8 THE COURT: Okay. Thank you. We are adjourned.

9 MR. KLINGEMAN: Your Honor, may we approach with
10 counsel off the record briefly?

11 (Sidebar; discussion off the record)

12 (Adjourned)